



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,541	07/27/2001	Carl D. Meinhart	1279-368	8568

7590

08/01/2003

Terri L. Sale, Esq.
Fulbright & Jaworski LLP
865 South Figueroa Street, 28th Floor
Los Angeles, CA 90017

EXAMINER

CHEU, CHANGHWA J

ART UNIT

PAPER NUMBER

1641

DATE MAILED: 08/01/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/916,541

Applicant(s)

MEINHART ET AL.

Examiner

Jacob Cheu

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 03 July 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-24

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

LONG V. LE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

07/31/03

Continuation of 5. does NOT place the application in condition for allowance because:

Applicant's argument has been considered but is not persuasive. With respect to the 35 U.S.C § 103 (a) rejection on claims 1, 2, 4-12, 14-24, Applicant argues that the Figure 2 of Lading et al. reference shows the flow channels for the inlet samples that are separate from the laser cavities, not any phase control section. Applicant also argues that Beregovski et al. do not teach the phase control feature in the laser sensor. First, the examiner would like to point out that the sample channel and the laser cavity in Lading reference is separate. (Emphasis added; See Figure 2) Second, the examiner relies on the second Beregovski et al. reference which teaches place the phase control section in the laser sensor for detection. Rather than "teaches away" from using the phase control in the laser sensor as argued by the applicant, it would have been obvious to one skilled in the art at the time the invention was made to have provided the device of Lading et al. with the phase control equipped laser sensor as taught by Beregovski et al. to detect the analyte of interest to enhance the sensitivity. (See page 116, last paragraph)

With respect to the 35 U.S.C §103 (a) rejection on claims 3 and 13, Applicant argues that the Seul reference is not pertinent to the instant application. Examiner disagrees and maintains the rejection. Since Seul et al. teach using dielectrophoretic electrode to increase the concentration of molecules to be diagnosed, it would have been obvious to one skilled in the art that the time the invention was made to have use the dielectrophoretic electrode to increase the concentration of the target molecules for a better detection.